

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

31678

FILE:

B-219031.3

DATE: July 12, 1985**MATTER OF:**

Newport Offshore Ltd.--Reconsideration

DIGEST:

1. Request for reconsideration is dismissed where it does not contain a detailed statement of the factual or legal grounds upon which reversal is deemed warranted.
2. Unsubstantiated suspicions are not adequate to meet a protester's burden of proving fraud or bad faith on the part of contracting officials.
3. The Freedom of Information Act (FOIA) provides no authority for GAO to determine when or what information must be disclosed by government agencies, and a protester's burden of proving its case is not affected by an alleged failure of an agency to disclose information under the FOIA.
4. GAO does not conduct investigations pursuant to its bid protest function for the purpose of establishing the validity of a protester's speculative statements.

Newport Offshore Ltd. (Newport) requests that we reconsider our decision in Newport Offshore Ltd., B-219031, B-219031.2, June 13, 1985, 85-1 C.P.D. ¶ _____. In that decision, we dismissed Newport's protest against the award of two contracts to Boulevard Marine Services (Boulevard) under requests for proposals (RFP) Nos. N00140-85-R-BA06 and N00140-85-R-BD45, issued by the United States Naval Regional Contracting Center Detachment, Newport, Rhode Island.

The request for reconsideration is dismissed.

In its initial protest, Newport questioned the contracting officer's affirmative determination that Boulevard was a responsible contractor. Our decision in the matter stated, however, that GAO will not review an

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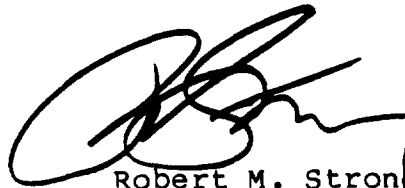
affirmative determination of responsibility unless the protester shows possible fraud or bad faith on the part of contracting officials or that definitive responsibility criteria in the solicitation have not been properly applied. Carolina Waste Systems, Inc., B-215689.3, Jan. 7, 1985, 85-1 C.P.D. ¶ 22. Although Newport had alleged bad faith on the part of contracting officials, we found that Newport's arguments were based on inadequately substantiated suspicions and, therefore, Newport had not met its burden of proof. Ebonex, Inc., B-213023, May 2, 1984, 84-1 C.P.D. ¶ 495. Consequently, we dismissed Newport's protest pursuant to 4 C.F.R. § 21.3(f)(5) (1985).

Newport's request for reconsideration admits that it does not contain a detailed statement of the factual or legal grounds upon which reversal or modification of the initial decision is deemed warranted, in accordance with the requirements of our Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1985). Newport contends, however, that its inability to meet its burden of proving bad faith on the part of contracting officials in the initial protest and in this reconsideration request is largely due to the contracting officer's failure to disclose, under the Freedom of Information Act (FOIA), information requested by Newport. However, the FOIA provides no authority for our Office to determine when or what information must be disclosed by government agencies and a protester's burden of proving its case is not affected by an alleged failure of an agency to disclose information under the FOIA. The protester's recourse is to pursue its disclosure remedies under the procedures provided by the FOIA. Canberra Industries, Inc., B-213663, June 22, 1984, 84-1 C.P.D. ¶ 659.

Newport has suggested in the alternative that the information it needs to support its position might be obtained through a conference called by our Office for that purpose. In effect, Newport requests that we conduct an investigation to determine whether bad faith was exercised in the contracting officer's determination that Boulevard was a responsible contractor. However, we do not conduct investigations pursuant to our bid protest function for the purpose of establishing the validity of a protester's speculative statements. Kisco Co., Inc., B-216646, Jan. 18, 1985, 85-1 C.P.D. ¶ 56.

Since Newport's request for reconsideration does not contain a detailed statement of the factual or legal grounds upon which reversal or modification of our prior decision is

deemed warranted, it is dismissed. 4 C.F.R.
§ 21.12(a) (1985); Trim Parts, Inc.--Reconsideration,
B-218707.2, May 13, 1985, 85-1 C.P.D. ¶ 537.

A handwritten signature in black ink, appearing to read 'R. Strong', with a large, stylized initial 'R'.

Robert M. Strong
Deputy Associate General Counsel